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February 25, 2008

VIA ECF AND HAND DELIVERY

Justice Lewis A. Kaplan
United States District Court Judge
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: Vitoli Mourzakhanov vs. DeWalt Industrial Tool Co, et al
07 CIV 6205 (LAK)

Honorable Sir:

We are counsel to defendant Black & Decker (U.S.) Inc. s/h/a DeWalt Industrial Tool Co., in the above captioned matter. We write to you on a hybrid issue that may require a pre-motion conference, pursuant to your rules, to the extent that it touches upon discovery issues. This is a nonjury products liability case in which plaintiff alleges he lacerated his hand while using a DeWalt reciprocating saw.

In accordance with a Stipulation, So Ordered by Your Honor on January 3, 2008: "Plaintiff's expert disclosure pursuant to Rule 26(a)(2) to be served no later than 2/15/08. Defendant's expert disclosures pursuant to Rule 26(a)(2) to be served no later than 2/28/08." (Exhibit "A" herewith)

On February 12, 2008 John E. Durst, Jr., counsel for plaintiff, wrote to the Court requesting a 30 day extension, to serve his expert disclosure, from February 15, 2008 to March 15, 2008. This would have, likewise, extended defendant's date to reply. (Exhibit "B" herewith)

Plaintiff did not serve expert disclosure "no later than February 15, 2008". To date, plaintiff has yet to serve expert disclosure. Of necessity, defendant's expert disclosure, which should be in the nature of reply, must be filed by February 28th. Defendant's disclosure will be addressed to the design of the saw and the accident in a more general manner than would have normally been contemplated in the absence of a specific defect claim from plaintiff. However, should the Court relieve plaintiff of this default defendant requests the opportunity to supplement its disclosure.

By endorsed memo dated February 21, 2008 and filed February 22, 2008, the Court denied plaintiff's application for an extension. Defendant seeks to move to preclude plaintiff from offering any expert testimony at trial due to plaintiff's discovery default. (Exhibit "C" herewith)

This motion, which would normally be in the nature of a motion in limine at trial, is made as a motion to preclude during discovery since a preclusion order at this time would obviate the expenditure of time and costs from the parties to travel to Boston to depose plaintiff's putative expert. The order of January 3, 2008 contemplated expert depositions in March, with all depositions to be completed by April 1, 2008.

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We therefore request a pre-motion conference on this issue or the Courts' advice that such a conference is not necessary.

Should the Court order such a conference, I respectfully request it be held after March 11, 2008 as I will be in China from February 27, 2008 to March 11, 2008.

Thank you for your consideration of this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert A. Calinoff', with a stylized flourish at the end.

Robert A. Calinoff (RAC5743)

RAC:cb

Enclosure

cc: John E. Durst, Jr., Esq. (via e-mail and regular mail)

Robert Calinoff

From: NYSD_ECF_Pool@nysd.uscourts.gov
Sent: January 03, 2008 03:43 PM
To: deadmail@nysd.uscourts.gov
Subject: Activity in Case 1:07-cv-06205-LAK Mourzakhanov v. Dewalt Industrial Tool Co. et al Stipulation and Order

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U.S. District Court

United States District Court for the Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 1/3/2008 at 3:43 PM EST and filed on 1/3/2008

Case Name: Mourzakhanov v. Dewalt Industrial Tool Co. et al

Case Number: 1:07-cv-6205

Filer:

Document Number: 10

Docket Text:

STIPULATION: All deposition to be completed by 4/1/08. Discovery cut off by 4/1/08.
Plaintiff's expert disclosure pursuant to Rule 26(a)(2) to be served no later than 2/15/08.
Defendant's expert disclosure pursuant to Rule 26(a)(2) to be served no later than 2/28/08.
Joint Pretrial Order shall be filed on or before 5/1/08. (Signed by Judge Lewis A. Kaplan on 1/3/08) (tro)

1:07-cv-6205 Notice has been electronically mailed to:

Robert A. Calinoff rcalinoff@candklaw.com

1:07-cv-6205 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=1/3/2008] [FileNumber=4130749-0]
[903d200b63f97c36b8a1c34de17d1feb536b67a03e553fdb36b0f5b8e97286a7cb5
cd8b439fd9c2a50b8f0b5cb1d207bd23d1b09c10f2845092ee9659e3f396]]

EXHIBIT "A"

2/25/2008

THE DURST LAW FIRM, P.C.

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February 12, 2008

Hon. Lewis A. Kaplan
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Request to amend Case Management Order
Mourzakhanov v. DeWalt, 07-cv-06205 (LAK)

Dear Judge Kaplan:

In this products liability case, we aspired to an abbreviated discovery schedule, but despite good faith efforts of all parties, the depositions were just completed today, and important information agreed to be provided during the depositions is being searched for.

Expert disclosure is scheduled for exchange February 15, 2008. Rather than provide incomplete expert reports, it is respectfully requested that the Case Management Order be modified by extending the deadlines for 30 days. Attached is a proposed amended Case Management Order.

I am making this request jointly with counsel for the defendant.

Very truly yours,


John E. Durst, Jr.

Cc: Robert Calinoff, Esq.
Counsel for Defendant

EXHIBIT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
VITALI MOURZAKHANOV,

Plaintiff,

-against-

DEWALT INDUSTRIAL TOOL CO.,
DEWALT CONSTRUCTION TOOLS and
BLACK AND DECKER (U.S.) INC

Defendants.
-----X

STIPULATION

07 CV 6205 (LAK)

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/22/08

IT IS HEREBY STIPULATED BY AND BETWEEN the attorneys
for the parties in the above-captioned matter that the Consent
Scheduling Order signed by Honorable Lewis A. Kaplan on December
21, 2007 be amended as follows:

1. All depositions to be completed by May 1, 2008;
2. Discovery cutoff by June 1, 2008;
3. Plaintiff's expert disclosure pursuant to Rule 26 (a) (2) to be served no later than March 15, 2008;
4. Defendants' expert disclosure pursuant to Rule 26(a) (2) to be served no later than April 15, 2008;
5. Joint Pretrial Order in the form prescribed in Judge Kaplan's Individual Rules shall be filed on or before June 1, 2008.

Dated: New York, New York

MEMO ENDORSED
in the absence of
any objection for our
disposal, application
SO ORDERED
LEWIS A. KAPLAN, USDC
2/22/08

EXHIBIT "C"